IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR
&
THE HONOURABLE MRS. JUSTICE K.HEMA

WEDNESDAY, THE 21ST NOVEMBER 2007 / 30TH KARTHIKA 1929

RCRev..No. 236 of 2004(G)

(AGAINST THE JUDGMENT PASSED ON 16/03/2004 IN RCA NO.120/2001 in the COURT OF THE DISTRICT COURT OF KOZHIKODE, WHICH IS AGAINST THE ORDER DTD. 31/01/2001 PASSED BY RENT CONTROL COURT, KOZHIKODE II, IN RCP 89/1992)

REVISION PETITIONER/APPELLANT/RESPONDENT:

CHEMMADAN MUHAMMED KUTTY, S/O.CHEMMADAN SULAIMAN, CHERUVANNUR AMSOM DESOM, KOZHIKODE TALUK

BY ADV. SRI.T.SETHUMADHAVAN
SRI.KODOTH PUSHPARAJAN
SRI.K.JAYESH MOHAN KUMAR

RESPONDENTS: RESPONDENTS/PETITIONERS:
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1. **KALATHIL AYISHABI, W/O.AHAMMED KOYA, CHERUVANNUR AMSOM DESOM OF KOZHIKODE.**
2. **KALATHIL MAMMUNNI, S/O.KLALATHIL AYISHABI, CHERUVANNUR AMSOM DESOM, OF KOZHIKODE TALUK.**
3. **KALATHIL AYISHA, D/O.KALATHIL AYISHABI, R/A. DO. DO.**
4. **KALATHIL MOIDEENKOYA, S/O.KALATHIL AYISHABI, R/AT. DO. DO.**
5. **KALATHIL KUNHALIKOY, S/O.KALATHIL AYISHABI R/A. DO. DO.**

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6. KALATHIL KUNHEEVI, D/O.KALATHIL
AYISHABI, PANNIYANKARA AMSOM DESOM,
KOZHIKODE TALUK.

7. KALATHIL RAZEEDA, D/O.KALATHIL AYISHABI,
THENHIPALAM AMSOM DESOM, MALAPPURAM DISTRICT.

8. KALATHIL MAIMUNA, D/O.KALATHIL AYISHABI,
R/A. DO. DO.

9. KALATHIL SUHARA, D/O.KALATHIL AYISHABI,
R/A. DO. DO.

10. KALATHIL LAILA, D/O.KALATHIL AYISHABI,
AT KAMMANAPPARAMBIL KUTTIKKATTOOR VILLAGE,
VELLIPARAMBA DESOM, KOZHIKODE TALUK.

11. KALATHIL NAJJIMMA, D/O.KALATHIL AYISHABI
THENHIPALAM AMSOM DESOM, MALAPPURAM DISTRICT.

12. KALATHIL RAHIMAS, D/O.KALATHIL AYISHABI,
PUTHIYANGADI AMSOM DESOM, VENGALAM DESOM,
KOZHIKODE TALUK.

13. KALATHIL SAJINA, D/O.KALATHIL AYISHABI,
CHERUVANNOOR AMSOM DESOM, KOZHIKODE, KOZHIKODE.

BY ADV. SRI.C.P.MOHAMMED NIAS for R1 to R10

THIS RENT CONTROL REVISION HAVING BEEN FINALLY HEARD ON 21/11/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

KSS

K.BALAKRISHNAN NAIR &

K.HEMA, JJ.

R.C.R. NO. 236 OF 2004

Dated 21st November, 2007.

ORDER

Balakrishnan Nair, J.

The tenant is the revision petitioner. The legal heirs of the landlord are the respondents. The Rent Control Petition was filed under Sections 11 (2)(b), 11(3) and 11(4)(ii) of the Kerala Buildings (Lease and Rent Control) Act, 1965 (hereinafter referred to as "the Act"). The Rent Controller allowed the petition under Section 11(2)(b). Though the bona fide need under Section 11(3) was upheld, the findings under the second proviso were in favour of the tenant. The landlords appealed. The appellate authority remanded the matter for reconsideration of the findings under the second proviso to Section 11(3). The appellate authority also directed the Rent Controller to consider the claim of the landlords under Section 11(4)(iii). Both sides were permitted to amend the pleadings and adduce fresh evidence. After the amendment of the RC.P and after taking fresh evidence, the Rent Controller found that the tenant is not entitled to get the protection

of the second proviso to Section 11(3). The finding under Section 11(4)(iii) was also against him. The tenant appealed. The appellate authority affirmed the findings of the Rent Controller. Hence this revision.

2. The learned counsel for the revision petitioner contended that the findings of both the authorities concerning the second proviso to Section 11 (3) and also the finding under Section 11(4)(iii) that the revision petitioner is having a suitable room, are unsustainable. The learned counsel took us through the evidence on record. But, we notice that the first appellate authority entered a clear finding that the tenant has failed to prove that he is depending on the income from the tenanted premises. The learned counsel further contended that the said finding is against the evidence on record. According to him, PW1 in the box admitted that the tenant is depending on the income from the tenanted premises for his livelihood. That alone is sufficient to interfere with the finding under the first limb of the second proviso to Section 11(3), it is contended.

3. But, going through the evidence on record, we find that PW1 categorically stated that the tenant is not depending on the income from the tenanted premises for his livelihood. It is also asserted that he is doing business in three other rooms in the same town. We find that there is no cross-examination on this point. Of course, the tenant has deposed that he

is solely depending on the income from the tenanted premises for his livelihood. It is not in dispute that the tenant has not adduced any evidence concerning his income. In view of the above statements of the witnesses,we feel that the view taken by the appellate authority that the tenant failed to prove that he is depending on the income from the tenanted premises for his livelihood, is certainly a plausible view on the facts. In revision, we cannot interfere with the same.

4. Regarding the second limb of the second proviso to Section 11(3), both the authorities relied on the finding under Section 11(4)(iii). According to the learned counsel for the revision petitioner, since the finding under Section 11(4)(iii) is unsustainable, the finding concerning the second limb of the second proviso is also liable to be interfere with. But, from the evidence of the Commissioner, it is more than clear that there were rooms available in the locality in a shopping complex owned by a private party and also in another complex owned by the Corporation of Kozhikode. The availability of those rooms is admitted by the tenant also. But, he would submit that the rent for the rooms will come to Rs.1600-1650 and he will have to deposit some rent in advance also. The same he is not able to afford.

5. Going by the decisions of this Court, the liability to pay enhanced

rent cannot be a ground to find that suitable rooms are not available in the locality. But, the learned counsel for the revision petitioner raised a technical contention that these two shopping complexes came into existence subsequent to the filing of the Rent Control Petition and therefore, the said fact cannot be taken into account for the purpose of the second proviso to Section 11(3) of the Act. We feel that the said contention cannot be accepted. It is a well settled position in rent control jurisdiction that subsequent developments can be taken note of. Further, the ownership and possession of another room by the tenant at the time of filing of the petition or subsequently, is a ground for ordering eviction. So, the availability of rooms subsequent to the filing of the R.C.P can also be taken into account in moulding the relief. So, we are of the view that without depending on the finding under Section 11(4)(iii), the landlords are entitled to succeed, in view of the existence of rooms in the two shopping complexes in the locality. Therefore, the tenant cannot get the protection of the second limb of the second proviso to Section 11(3).

6. The next point canvassed by the learned counsel for the revision petitioner is that the finding under Section 11(4)(iii) is also unsustainable. It is an undisputed fact that the petitioner is in possession of Room No.11/81. He was doing business in the said room earlier. Later, the

tenanted room was taken and he started doing business there. He is using the old room in his possession for storing his goods. So, according to the revision petitioner, the said room is not available. Further, it is not suitable for running the business also. It is in a remote road and the area of the room is also not sufficient for running the business. But, we notice that both the authorities concurrently found against the tenant on this point. Relying on the Commissioner's evidence and other materials on record, it was so held. Of course, if we were hearing the Rent Control Petition or the appeal, we might have taken a different view. But, we think that the difference of opinion with the view taken by the authorities below is not a ground for interfering with their findings, unless it is shown that the said finding is perverse or one which no man in his senses will arrive at. We are of the view that a plausible view on the facts has been taken that the other room available with the tenant, which is stated to be used for storing the goods, can be used for shifting his business. In the result, the Rent Control Revision fails and it is dismissed.

7. The learned counsel for the revision petitioner prayed for some time to vacate the premises. Having regard to the fact that the revision petitioner is running a business in the petition scheduled room, he is granted six months' time from today to vacate the premises, provided he files an

unconditional undertaking before the executing court in the form of an affidavit, undertaking to vacate the premises within six months from today. The affidavit shall be filed within three weeks from today. He shall pay the arrears of rent, if any, within one month from today. The monthly rent payable from time to time shall also be paid till the room is vacated.

K.BALAKRISHNAN NAIR, JUDGE.

K.HEMA, JUDGE.

Nm/